

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

MAR 18 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Implementation of the Cable Television Consumer Protection and Competition Act of 1992:

MM Docket No. 92-260

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Submitted By

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In the Matter of)	
)	
Implementation of the Cable)	
Television Consumer Protection)	MM Docket No. 92-260
and Competition Act of 1992:)	
)	
Cable Home Wiring)	

COMMENTS OF THE CABLE TELECOMMUNICATIONS ASSOCIATION

1. The Cable Telecommunications Association ("CATA"), hereby files comments to the Further Notice of Proposed Rulemaking in the above-captioned proceeding. CATA is a trade association representing owners and operators of cable television systems serving approximately 80 percent of the nation's more than 66 million cable households. CATA files these comments on behalf of its members who will be directly affected by the Commission's action.

Multiple Dwelling Unit Buildings With Loop-Through Wiring

2. The Commission requests comment on whether to permit a building owner to purchase loop-through wiring where all subscribers in a multiple dwelling unit (MDU) building want to switch to a new service provider. Surely, this is a recipe for mischief. Should the Commission adopt such a rule, the result will be to the benefit primarily of the building owner, ever ready to be paid, and the new service provider, ever ready to pay the building owner. Somehow, in all this mutual back-scratching, we are to assume

that all subscribers in the building have spontaneously decided to switch services. One does not have to be particularly cynical to understand the pressure that both landlord and cable competitor will bring to bear. Free choice will be re-defined.

3. Apart from the fact that permitting the building owner to acquire a cable system's distribution plant on behalf of a service competitor would be a government sponsored charade, the Commission must understand the ultimate result. Competition would suffer. Once deprived of its cable, the system operator will have no opportunity of offer any of the services that its broadband system is designed to carry. Once a competitor acquires the cable, customers will lose the ability to receive not only the cable operator's traditional video offerings, but new service such as telephony, internet connection, and data services. And the Commission proposes no mechanism for ever having the cable returned. The proposal is a one-way street.

4. Requiring the cable operator to sell its distribution facilities to a building owner would also be illegal. The only authority the Commission has to regulate the disposition of cable wiring is with respect to a subscriber's premises upon voluntary termination of service. A subscriber's premises cannot be considered hallways, stairwells or elevator shafts. The cable in these areas belongs to the cable operator and the Congress has given the Commission no authority to dispose of it either on behalf of a building owner or a competitor.

5. As CATA has argued in its comments in CS Docket No. 95-184, filed this day, the Commission cannot simply take a cable operator's property without insuring that the operator receives just compensation. Otherwise the taking would violate the Fifth Amendment of the Constitution. In the original home wiring proceeding the Commission determined that the value of cable as its replacement cost -- six cents a foot. Clearly, however, when the entire distribution system is confiscated, the value of the cable must be much higher. The courts have held that when property is taken by government action, the value of the property is its market value, that is, the value arrived at by a willing buyer and willing seller. See, e.g., Almeta Farmers Elevator & Whse. Co. v. United States, 409 U.S. 470, 474 (1973); Olson v. United States, 292 U.S. 246 (1934). Where a cable operator's distribution facilities are being taken, the Commission cannot assume that six cents a foot for the cable is just compensation. When the distribution facilities are taken, so is the business. The operator loses not only present business, but, as noted above, the ability to offer future services. Under such circumstances, it has been determined that a property's potential use can enhance its present market value and that enhanced value is properly considered in determining just compensation. See, e.g., United States v. Land, 62.50 Acres of Land More or Less, 953 F. 2d 886, 890 (5th Cir. 1992). It would be wrong and anti-competitive if the Commission forces the sale of a cable operator's distribution plant. It would be unseemly if the Commission does so at the behest of a competitor. To do so without just compensation would be plainly illegal.

Continued Use of Loop-Through Wiring

6. The Commission has requested comment on whether it should prohibit the future use of loop-through wiring and whether it has the authority to do so. First, of course, merely because the Commission perceives a problem does not mean it has the authority to solve it. Even the Cable Act of 1992, which delved deeply into every nook and cranny of the cable business, did not give the Commission authority to dictate how a building is to be wired. Certainly the Telecommunications Act of 1996, the essence of which is the promotion of a competitive telecommunications market, did not give the Commission authority to promote competition by regulating system architecture.

7. Loop-through architecture has long been used under various circumstances. In some buildings there is no way, at a practical cost, to run bundles of individually dedicated cables. In other cases, building owners will not permit the operator to run a cable bundle through the building fearing damage to walls or the like. Clearly, use of a loop-through system does not provide a cable operator with the flexibility that modern cable systems and their customers would prefer. Still, in some cases, loop-through systems spell the difference between having cable service or not. Under these circumstances, even if it had the authority to inject itself into such matters, and it does not, the Commission would be unwise to adopt a blanket prohibition against the use of loop-through wiring.

Everybody Loves a Landlord"

8. Finally, the Commission asks whether its home wiring rules apply when a building owner terminates service for the entire building in favor of another video provider. CATA can understand why a competitor would wish this to be the case. A competitor wants the cable system's business and is willing to pay a building owner to get it for a price much less than doing its own wiring. What is difficult to understand is what has possessed the Federal Communications Commission to lend its authority to such a process. Does the Commission believe that when a building owner's palm is crossed with silver the best interests of the subscribers have been satisfied? Does the Commission value an individual subscriber's choice so little? In its home-wiring rules, amended in this proceeding, the Commission has permitted a cable system's competitor to act as agent for a subscriber for the purpose of switching service. Now it appears that the Commission may be willing to act as agent of the cable competitor for the purpose of helping.

Respectfully submitted,

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